

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION**

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**MODINE MANUFACTURING CO.,**

Plaintiff,

Case No. 2:12-cv-00815-JPS

vs.

**BORGWARNER, INC.,**

Defendant.

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**JOINT RULE 26(F) PLAN**

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Pursuant to this Court's Order of December 28, 2012 and Fed.R.Civ.P. 26(f), Plaintiff Modine Manufacturing Company ("Modine") and Defendant BorgWarner, Inc. ("BorgWarner") submit this Joint Rule 26(f) Plan.

Pursuant to the Court's Order and Rule 26(f), a meeting was held on January 14, 2013 by telephone and was attended by Jonathan H. Margolies and Katherine W. Schill of Michael Best & Friedrich, LLP, counsel for Modine; and Richard W. Hoffmann of Reising Ethington PC and K. Scott Wagner of Hale & Wagner, S.C., counsel for BorgWarner.

Modine alleges that BorgWarner has infringed U.S. Patent No. 8,033,323 ("the '323 patent") by manufacturing, using, offering for sale, and/or selling an exhaust gas recirculation cooler that includes every element of claims 1-27 of the '323 patent. BorgWarner denies infringement and asserts that the '323 patent is invalid. The general subjects of discovery will be the prosecution of the '323 patent, claim construction, the design and development of the commercial embodiment of the '323 patent, the design and development of the allegedly infringing devices, the nature and scope of the prior art, and damages. The parties anticipate that

discovery will require the production of electronically stored information, and will work together to agree on the form of such production. The parties do not request any change to the limitations on discovery imposed by the rules, or to the timing, form, or requirement for disclosures under Rule 26(a).

Counsel for both parties fully understand and appreciate the Court's docket procedures and the service to the public and litigants the Court's expeditious docket provides. In light of the Court's December 28, 2012 Order, the parties attempted to create a discovery plan that sets trial by November 1, 2013. That plan is set forth below.

Deadline for initial disclosures and amendments to pleadings	February 13, 2013
Deadline for plaintiff to serve infringement contentions	March 4, 2013
Deadline for defendant to serve invalidity contentions by defendant	March 18, 2013
Date on which parties will exchange disputed claim terms and claim constructions	March 25, 2013
Date on which parties will file simultaneous opening Markman briefs	April 5, 2013
Date on which parties will file simultaneous responsive Markman briefs	April 26, 2013
Deadline for serving expert reports on subjects for which a party bears the burden of proof	June 7, 2013
Deadline for serving rebuttal expert reports	July 8, 2013 or 14 days after Markman decision
Discovery cut off (other than expert depositions)	July 22, 2013 [parties to work together in February to set foreign depositions]
Deadline to file summary judgment motions	August 2, 2013

Deadline to file response briefs	September 6, 2013
Deadline to file reply briefs	September 20, 2013
Trial	October 28, 2013 [to be completed by Nov. 1]

Counsel also jointly propose an alternative schedule given the posture of this case and, in particular, the particular foreign discovery that will be required. The parties are involved in very high level settlement negotiations, including an in-person meeting to discuss the substance of the allegations and defenses. In light of ongoing discussions, Modine agreed to an extension of time for BorgWarner to answer until January 26, 2013, and the parties agreed to a tolling of litigation-based activities through the answer date.

Because discovery, should it become necessary, will not begin until early February 2013, and because witnesses for both parties are located in European countries which are signatories to the Geneva Convention, counsel for both parties respectfully request that this Court add 3 months to its usual schedule, and consider the parties' submission of an alternate schedule premised on a February 2014 trial date rather than the November 1 trial date noted in the Court's Order of December 28, 2012. This will still result in the trial of this matter within approximately 12 months of the answer date.

The submitted schedule does not envision any delays by the parties, and because both parties agree that claim construction issues very well might be dispositive in this matter, the parties have further agreed to an early Markman schedule, with briefing completed by May 17, 2013.

The parties and their counsel all appreciate the Court's consideration of this alternative and respectfully request that the following schedule be entered.

Deadline for initial disclosures and amendments to pleadings	February 13, 2013
Deadline for plaintiff to serve infringement contentions	March 4, 2013
Deadline for defendant to serve invalidity contentions	March 18, 2013
Date on which parties will exchange disputed claim terms and proposed claim constructions	March 25, 2013
Date on which parties will file simultaneous opening Markman briefs	April 19, 2013
Date on which parties will file simultaneous responsive Markman briefs	May 17, 2013
Deadline for serving expert reports on subjects for which a party bears the burden of proof	July 12, 2013
Deadline for serving rebuttal expert reports	August 9, 2013
Discovery cut off	September 6, 2013 [parties to work together to set foreign depositions]
Deadline to file motions for summary judgment	October 4, 2013
Deadline to file response briefs	November 1, 2013
Deadline to file reply briefs	November 15, 2013
Trial	February 10, 2014

Dated this 4<sup>th</sup> day of February, 2013.

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